

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

COLVIN MCCRIGHT,)	No. C 04-1419 JW (PR)
)	
Petitioner,)	ORDER DENYING CERTIFICATE
vs.)	OF APPEALABILITY
)	
JOE MCGRATH,)	
)	
Respondent.)	
)	

Petitioner, a state prisoner proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. 2254 challenging the failure of the California Department of Corrections to provide him with conduct credits. On March 13, 2006, the Court granted Respondent's motion to dismiss and dismissed the instant habeas petition for failure to exhaust. On March 23, 2006, Petitioner filed a notice of appeal. The Court construes the notice of appeal as a request for a certificate of appealability pursuant to 28 U.S.C. § 2253 (c)) and Federal Rule of Appellate Procedure 22(b). See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997). The Court denies the certificate of appealability.

DISCUSSION

Upon the filing of a notice of appeal and a request for a certificate of appealability (COA), the district court shall indicate which specific issue or issues satisfy the standard for

1 issuing a certificate, or state its reasons why a certificate should not be granted. See United
2 States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997) (citing 28 U.S.C. §2253(c)(3)).

3 The Court dismissed the instant petition for failure to exhaust. Petitioner has not shown
4 “that jurists of reason would find it debatable whether the petition states a valid claim of the
5 denial of a constitutional right and that jurists of reason would find it debatable whether the
6 district court was correct in its procedural ruling.” Slack v. McDaniel, 120 S. Ct. 1595, 1604
7 (2000). Accordingly, the Court DENIES the certificate of appealability.

8 The Clerk shall transmit the file, including a copy of this order, to the Court of Appeals.
9 See Fed. R. App. P. 22(b).¹

10 DATED: April __, 2006

11 _____
JAMES WARE
United States District Judge

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28 ¹ Petitioner may then ask the Court of Appeals to issue the certificate, see Fed. R. App. P.
22(b)(1), or if he does not, the notice of appeal will be construed as such a request, see Fed. R.
App. P. 22(b)(2).

1 This is to certify that this order was mailed to the following:

2 Anya Binsacca
3 Elizabeth S. Kim
4 Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

5 Colvin McCright
6 Pelican Bay State Prison
5905 Lake Earl Drive
7 P.O. Box 7500
Crescent City, CA 95532

8
9 dated: _____

CLERK OF COURT

10
11 By: ____/s/JW Chambers_____
12 Melissa Peralta
13 Deputy Clerk
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